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File *Legal*

21 OCT 1975

MEMORANDUM FOR: Legislative Counsel

ATTENTION :

THROUGH :

SUBJECT :

Deputy Director for Administration *J/der*

Senate Bill to amend the Public Health Service Act to establish a President's Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

REFERENCE :

OLC request for comments on subject bill, dated 2 October 1975 (OLC 75-2460)

1. Pursuant to the referenced request, the Office of Security has reviewed the subject bill proposed by the Subcommittee on Health. The following comments are forwarded for your consideration.

2. Sections 481(g) and 482(a)(1)(C) provide the Commission with the authority to review all biomedical and behavioral research on human subjects conducted by and through federal agencies and to directly secure from any agency information necessary to enable the Commission to carry out its duties. Should the secured information be classified, it would be received by and limited to the Commission's Special Classified Information Committee. However, if this Committee, during its consideration of such classified information, found that there is or would be an adverse impact upon the protection of human subjects of research, it must disclose the information to the full Commission without regard to the information's sensitivity.

3. Although the above requirements have little effect upon Office of Security programs, they do provoke security interest relative to protecting Agency classified information

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and intelligence sources and methods, should such Agency material be directed to the Commission. Thus, physical security procedures planned by the Commission along with clearability requirements for Commission members and associated staff personnel are security areas which need clarification.

4. Section 482(a)(2) identifies individuals who appear to be unable to protect their own rights such as children, prisoners and the mentally infirm. The inclusion of current and former military personnel with these types of individuals seem to be questionable. Further, to define CIA employees and agents as military personnel to the exclusion of civilian employees for the Department of Defense and other federal agencies is somewhat unclear.

5. Finally, Section 484(b) provides that any agency receiving Commission recommendations must publish such recommendations in the Federal Register and provide an opportunity for interested persons to submit written data, views and arguments with respect to such recommendations. Should the agency determine that the Commission's recommendations are not appropriate, the agency must publish in the Federal Register its determination together with an adequate statement of the reasons for it. This Section does not provide for exempting classified information from the publishing requirement.

6. In view of the above, it is recommended that the Office of Legislative Counsel request the Senate Subcommittee preparing the bill to consider these security issues in order to ensure that classified information is appropriately protected against unauthorized disclosure.

Robert W. Gambino
Director of Security

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